

**UNITED STATES DISTRICT COURT OF THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: DIGITEK PRODUCT
LIABILITY LITIGATION

MDL Case No 1968

**THIS DOCUMENT RELATES TO ALL
CASES:**

NOTICE OF SUPPLEMENTAL EVIDENCE IN SUPPORT OF
(1) PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION IN LIMINE TO
EXCLUDE UNRELIABLE HEARSAY;
(2) PLAINTIFFS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT;
(3) McCORNACK'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT; AND
(4) VEGA'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs submit the attached Affidavit of Lynne Farrell as supplemental evidence in Support of Plaintiffs' Opposition to Defendants' Motion to Exclude Unreliable Hearsay (See PACER Docket No. 551) as well as Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (PACER Docket No. 549). This evidence is also relevant evidence in the Oppositions to Summary Judgment filed in the individual cases *McCornack v. Actavis*, 2:09-cv-0671 (see PACER Docket No. 129) and *Vega v. Actavis*, 2:09-cv-0768 (see PACER Docket No. 63).

The Affidavit was signed by the individual that personally observed the double thick tablet of Digitek and is admissible evidence to prove that double thick tablets of Digitek were in

fact released by Defendants and entered into the stream of commerce at approximately the same time of the nationwide recall.

Plaintiffs just received this Affidavit from Ms. Farrell and were unable to submit it any earlier. There is no prejudice to Defendants as their Reply papers are not due for another 9 days. For these reasons, Plaintiffs request that the Court consider this evidence in conjunction with their previously filed Opposition.

Respectfully Submitted.

Dated: August 29, 2011

/s/ Terry Kilpatrick
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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2011, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: August 29, 2011

/s/ Terry Kilpatrick
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